

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

MIGUEL ANGEL BENAVIDES-GARCIA

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CAUSE NO. 1:09CR46-LG-JMR

ORDER GRANTING MOTION TO DISMISS INDICTMENT

BEFORE THE COURT is the Motion to Dismiss for Speedy Trial Violation [12] filed by the defendant, Miguel Angel Benavides-Garcia. The defendant argues that the charge against him should be dismissed because the indictment was not filed within thirty days of his arrest. The Government concedes that the indictment was filed four days late, but it asserts that the indictment should be dismissed without prejudice. Upon reviewing the submissions of the parties and the applicable law, the Court finds that the Motion to Dismiss should be granted and that the indictment should be dismissed without prejudice.

DISCUSSION

The defendant was arrested on a traffic violation on April 10, 2009, and he was taken into custody by the border patrol since he was suspected of being an undocumented alien. A criminal complaint was filed against him in this Court on April 16, 2009, and his initial appearance took place on that same day. On May 20, 2009, the Grand Jury returned an indictment charging him with a violation of 18 U.S.C. 1326(a). The indictment was filed approximately thirty-four days after the criminal complaint was filed. The Government states that the cause of the delay was a breakdown in communication between the United State's Attorney's Office and the Border Patrol.

18 U.S.C. § 3161(b) provides: "Any information or indictment charging an individual

with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.” If the indictment is not filed within thirty days, the complaint must be dismissed. 18 U.S.C. §

3162(a)(1). The Speedy Trial Act provides:

In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and the administration of justice.

18 U.S.C. § 3161(a)(1).

It is undisputed that the indictment in the present case was not timely. However, the crime charged against the defendant is relatively serious due to the fact that he is subject to up to ten years imprisonment. Additionally, the four-day delay did not prejudice the defendant and was caused by a mere breakdown in communication. As a result, the Court finds that the indictment should be dismissed without prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion to Dismiss for Speedy Trial Violation [12] filed by the defendant, Miguel Angel Benavides-Garcia, is **GRANTED**. The indictment against the defendant is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED AND ADJUDGED this the 27th day of May, 2009.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE